

### **REMARKS**

The Applicants request reconsideration of this application in view of the present Amendment.

Previously withdrawn claims 24, 27 and 29-40 have been cancelled to place the application in condition for allowance or appeal. The Applicants reserve the right to file a divisional or other continuation application containing these claims.

#### **I. Interview**

The undersigned wishes to thank the Examiner for discussing this application in an interview on December 13, 2004. The Examiner's advice to provide evidence of existing blends that do not have stress crack resistance of at least 24 hours in order to overcome the inherency rejection was very helpful. The Applicants believe that the remarks presented below and the accompanying Declaration under 37 C.F.R. § 1.132 provide the evidence needed to overcome the rejection under 35 U.S.C. § 102.

#### **II. 35 U.S.C. § 102**

The pending claims have been rejected under 35 U.S.C. § 102(b) over Wooster. Wooster is alleged to disclose blends of the polyethylenes recited in the pending claims, and also to inherently disclose all the blend properties recited in the pending claims, including a stress crack resistance of at least 24 hours.

"To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.'" *In re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999). Stated another way, "[t]he fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic." M.P.E.P. § 2112, IV, p. 2100-54 (Rev. 2, May 2004) (*citing In re Rijckaert*, 9 F.3d 1531, 1534 (Fed. Cir. 1993)) (emphasis in original).

Applicant's have previously argued that Wooster does not disclose, inherently or otherwise, a stress crack resistance of at least 24 hours and, thus, the claims cannot be anticipated by Wooster. The Final Office Action dismisses this argument by asserting that "under 35 U.S.C. 102 inherent properties need not be recited in the reference." While this may be a generally correct statement of law, the facts of the present case are such that Wooster does not inherently disclose a stress crack resistance of at least 24 hours. Specifically, melt blends of the three polyethylenes listed in the pending claims *do not necessarily* have a stress crack resistance of at least 24 hours. Therefore, this recited property is not necessarily present in Wooster.

Submitted with this Amendment is a Declaration under 37 C.F.R. § 1.132 made by Michael G. Harris, a named inventor. Mr. Harris' Declaration provides three examples of polyethylene blends that utilize polyethylenes of the type recited in the claims that *do not* have a stress crack resistance of at least 24 hours. Because blends of the polyethylenes recited in the claims exist that *do not necessarily* have a stress crack resistance of at least 24 hours, Wooster's disclosure of polyethylene blends does not inherently disclose polyethylene blends with a stress crack resistance of 24 hours.

Independent claims 1, 20, 23, 26, 41 and 44 each recite that the claimed blend has a stress crack resistance of at least 24 hours. Because Wooster does not inherently disclose a stress crack resistance of at least 24 hours, claims 1, 20, 23, 26, 41 and 44 cannot be anticipated by Wooster under 35 U.S.C. § 102(b). For this reason, the Applicants respectfully request that the rejection of claims 1, 20, 23, 26, 41 and 44 under 35 U.S.C. § 102(b) be withdrawn.

Claims 2-4, 6-15, 21-22, 25, 28, 42-43 and 45-50 depend from independent claims 1, 20, 23, 26, 41 and 44 and recite elements that further distinguish the invention from the disclosure of Wooster under 35 U.S.C. § 102(b). The Applicants respectfully request that the rejection of these dependent claims under 35 U.S.C. § 102(b) be withdrawn as well.

**III. Conclusion**

Applicants respectfully submit that the present Amendment places the application in condition for allowance, and allowance is requested.

The Examiner is invited to call the undersigned to discuss these or any other issues.

Respectfully submitted,



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